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File No. O Harijan/49

Legal Department

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Subject:— Opinions under the Bombay Harijan (Removal of Social Disabilities) Act 1946.

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C O N T E N T S.

Legal Department File No. C.Harijan/49.

Sr. No.	Compilation No.	Subject	Pages.
		Opinions under the Bombay Harijan (Removal of Social Disabilities)Act, 1946.	
1.	C.No. 1272. 12/11/1949.	Sections 4 and 7 Whether purifying a place for the purpose of removing the pollution of a Harijan's bain: or presence constitutes an offence under this Act.	1 - 6.

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At the recent Zavba's Wadi Ganpati Festival the tamasha of the Sarvodaya Kala Pathak gave a performance when the Secretary was warned that if the tamasha is not stopped in ten minutes, there would be rowdyism. The next day the priest refused to worship the Ganpati; for, he suspected that there were some Mahars among the men who performed the tamasha. A section of the managing committee maintained that owing to the arrival of the mahars the Ganpati got polluted and must be purified, and after deliberation for a long time, the working Committee decided to perform ' shanti' with a view to purify the Ganpati. The question raised for the R.L.A's consideration is whether this contitutes an offence under the Bombay Harijan (Removal of Social Disabilities) Act, 1946.

2. It is as well to state at the outset that this would not constitute any offence under the other cognate enactment, namely, the Bombay Harijan Temple Entry Act, 1947. The only section of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, which may be attracted is section 4. That section reads as follows:-

> " No person in charge of any of the places referred to in sub-clauses (i)(iii), (iv), (v) and (vi) or any conveyance referred to in sub-clause (ii) of clause (b) of section 3 shall impose any restriction on a Harijan or act in a manner as to result in discrimination against him merely on the ground that he is a Harijan."

The latter part of the section which is relevent for our purposes requires two things: (1) that there must be a place referred to in sub-clauses (i),(iii),(iv), (v) and (vi) of clause (b) of section 3, and (2) that the person in charge of that place must act in a manner as to result in discrimination against a Harijan merely on the ground that he is a Harijan. The words " act in a manner as to result in discrimination are very wide indeed

." To discriminate against" means to make a distinction with regard to; to distinguish unfavourably from other. Murray's New English Dictionary vol 3 p.436. For establishing discrimination it is not necessary that the act constituting the discrimination must curtail the right of the person or prejudicially affect him in the enjoyment of that right. Conduct which is intended to to distinguish Harijans unfavourably from caste Hindus, although such conduct may be consequent upon a Harijan asserting his right and may not affect the enjoyment of that right, would be as much discrimination against a Harijan as conduct which actually affects the assertion of his right. The object of the enactment was to remove the social disabilities of Harijans. The main disability of a Harijan was the pollution of taint supposed to attach to his touch, which made him an "untouchable". Any act or conduct which establishes that distinction of untouchability against a Harijan would be an act which discriminates against a Harijan; and it would make no difference whether such act precedes the enjoyment of a right by a Harijan or follows it. In that view purifying a place for the purpose of removing the pollution of a Harijan's touch or presence is acting in a manner as to result in discrimination against the Harijan. The place can also be said to be set apart for the use of Hindus generallly The Mandap where the idol was installed was for the time being set apart for Hindus generallly, whatever may have been its original use. It is not necessary under sub-clause (vi) of clause (b) of section 3 of that the place should be permanently set apart for Hindus, and it is well known that a mandap for a Ganpati would not be open of access to non-Hindus such as Muslims or Christians. The Managing Committee can

be said to be in charge of the pandal including the idol. If it be true, as the press cutting says, that the Managing Committee bowed to the wishes of the priest and got the Ganpati purified, they would in my opinion be liable for the offence of contravening the provisions of section 4, which is made punishable under section 7 of the Act; and the priest, who performed the purification ceremony, would be liable for abetment of that contraventia

3. In any case although the point may not be absolutely free from doubt, this is a case which, in my opinion, deserves to be taken to a Court of law at least for the purpose of getting an authoritative interpretation of section 4, before we undertake any amendment t close the loophole to which the other press cutting of 'March' refers.

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Remembrancer of Legal Affairs.

U.O. to E.D.No. 12772, dated the 12th November 1949.

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